

BOARD OF APPEALS CASE NO. 5277

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BEFORE THE

APPLICANTS: Wayne & Cheri Whiting

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ZONING HEARING EXAMINER

**REQUEST: Variance to enlarge an existing deck
on a non-conforming structure;
4105 E. Baker Avenue, Abingdon**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 8/7/02 & 8/14/02

HEARING DATE: September 16, 2002

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Record: 8/9/02 & 8/16/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Wayne & Cheryl Whiting, are requesting a variance, pursuant to Section 267-21 of the Harford County Code, to enlarge an existing deck on a non-conforming structure in an R2/Urban Residential District.

The subject parcel is located at 4105 E. Baker Avenue, Abingdon, MD 21009 and is more particularly identified on Tax Map 62, Grid 3F, Parcel 0314, Lot 92. The subject parcel consists of 0.26± acres, is zoned R2/Urban Residential District and is entirely within the First Election District.

The Applicant, Cheryl Whiting, appeared and testified that her existing deck is 203.25 square feet and is irregularly shaped. The deck as currently configured is pointed resulting in a good deal of unusable deck space (see Attachment 3). Additionally, the deck is in the Critical Area. The Applicant proposes to “square off” the deck by adding 182.25 square feet of decking in the area adjacent to the point of the deck. The existing deck has been at its present location since 1987 and is used by the family as outdoor living space. Squaring the deck will allow additional space for outdoor use and will not, according to the Applicant, have any adverse impact on adjoining properties. The witness pointed out that after completion of the additional decking the deck will measure 17 ½ feet by 27 feet, a deck substantially smaller than others found in her neighborhood. In the opinion of the witness, the nonconformity of the deck results from the creation of the Critical Area District and without that occurrence no variance would be required. This, in the opinion of the witness, makes the features of the property unique.

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The Department of Planning and Zoning, in recommending approval of the Applicants' request, found that the Applicant's property was unique and that the Applicants' request could meet or exceed each of the specific requirements of the Harford County Code.

There were no persons who appeared in opposition to the subject request.

CONCLUSION:

The Applicants, Wayne & Cheryl Whiting, are requesting a variance, pursuant to Section 267-21 of the Harford County Code, to enlarge an existing deck on a non-conforming structure in an R2/Urban Residential District.

Harford County Code Section 267-21 provides:

"Enlargement or extension of nonconforming buildings, structures or uses.

The Board may authorize the extension or enlargement of a nonconforming use, with or without conditions, provided that:

- A. The proposed extension or enlargement does not change to a less-restricted and more-intense use.
- B. The enlargement or extension does not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the nonconformity.
- C. The enlargement or extension does not violate the height or coverage regulations for the district.
- D. The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.
- E. The limitations, guides and standards set forth in § 267-9I, Limitations, guides and standards, are considered by the Board.

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Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."**

Section 267-9I provides:

"Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.**
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.**
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.**
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.**
- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.**
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.**
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.**

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- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.**
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.**
- (10) The preservation of cultural and historic landmarks.**

The Applicant has demonstrated that the intended use will meet or exceed each of the requirements set forth in 267-21. The use will not change to a less restricted or more intense use. The enlargement will not come any closer to the rear property line than it is today. The rear of the property is on the Bush River so there are no properties that will be impacted by this enlargement. The deck will not exceed 50% of the existing gross square footage. There are no adverse impacts that can be identified with this enlargement and the height will not be impacted. The Hearing Examiner reviewed each of the Guides, Limitations and Standards of Section 267-9I and concludes that there are no identifiable impacts associated with this minor enlargement. The property is unique in that it is water impacted property subject to CA restrictions that were implemented long after the home and original deck were built. The deck can be built in a manner that does not increase the impervious surface area on the lot and will therefore have no impact on the CA district.

For the foregoing reasons, the Hearing Examiner recommends approval subject to the following conditions:

- 1. The Applicant shall obtain any and all necessary permits and inspections.**
- 2. The Applicant shall meet all requirements of the Chesapeake Bay Critical Area Regulations.**
- 3. A landscaping plan must be submitted to the Department of Planning and Zoning for review and approval prior to issuance of any permits.**
- 4. The deck will be constructed in such a manner that no additional impervious surface area is created on this parcel.**

Date OCTOBER 16, 2002

**William F. Casey
Zoning Hearing Examiner**